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OFFICE OF PETITIONS

In re Application of
Shen, et al. :
Application No. 10/788,825 :
Filed: February 27, 2004 : DECISION GRANTING PETITION
Attorney Docket No. LA0100(NP) :

This is a decision on the "SUPPLEMENTAL REPLY TO THE NOTICE OF INCOMPLETE NONPROVISIONAL APPLICATION", filed June 17, 2004, which is being treated as a petition under 37 CFR 1.53 to accord the above-identified application a filing date of February 27, 2004.

The application was deposited on February 27, 2004. However, on May 20, 2004, the Office of Initial Patent Examination mailed a "Notice of Incomplete Nonprovisional Application", stating that the application had not been accorded a filing date because the application was deposited without drawings.

As stated in MPEP § 601.01(f), it is the practice of the PTO to treat an application that contains at least one process or method claim as an application for which a drawing is not necessary for an understanding of the invention under 35 U.S.C. 113 (first sentence).

MPEP § 601.01(f) also states that:

A nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g), so long as the application contains something that can be construed as a written description.

This instant application contains method claims.

Therefore, the application should have been treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP § 601.01(g).

In view of the above, the petition is GRANTED.

The "Notice of Incomplete Nonprovisional Application", mailed May 20, 2004, was mailed in error and is hereby VACATED.

The above-identified application is accorded a filing date of February 27, 2004, as requested in the petition.

Given the basis for granting this petition, no petition fee has been charged.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of February 27, 2004, using the application papers received in the Office on that date and for indication on the file wrapper label to show that "0" sheets of drawings were present on filing.

Telephone inquiries specific to this decision may be directed to Petitions Attorney Cliff Congo at (703) 305-0272.

Patricia Faison Ball
for

Charles Pearson
Director
Office of Petitions